

VIRGINIA BRIGGS)	
Claimant)	
VS.)	
)	
SUSAN B. ALLEN MEMORIAL HOSPITAL)	Docket No. 214,916
Respondent)	
AND)	
)	
PHICO INSURANCE COMPANY)	
Insurance Carrier)	

Preliminary hearing orders are reviewable only as to claims that the ALJ has exceeded his or her jurisdiction. K.S.A. 44-551. This includes issues identified specifically as jurisdictional issues in K.S.A. 44-534a. If the case is subject to that limited jurisdiction, the only question would be whether the ALJ exceeded his jurisdiction.

In previous decisions the Appeals Board has limited its review of appeals from a post-award application for preliminary hearing benefits. The Board has looked only to determine whether the ALJ has exceeded his or her jurisdiction. The Board acknowledges that a recent unpublished Court of Appeals decision suggests that a post-award application for medical may be reviewed by the Board as a final order subject to full review. One of the parties has sought Supreme Court review of that decision. As an unpublished decision, and because it has been appealed, that decision cannot be used as a precedent and for that reason a majority of the Board would follow the practice of treating the application, at least one such as this one arising from an application for preliminary hearing, as a preliminary hearing and limiting the review to the jurisdictional issues subject to review in an appeal from a preliminary hearing. The issue raised in this case is not a jurisdictional issue. The question is which of two potential accidents, both while working for the same employer, gives rise to the need for medical treatment and temporary total disability. Applying the limited review standard, the Board concludes the appeal does not raise a jurisdictional issue and should be dismissed. K.S.A. 44-551 and K.S.A. 44-534a.

If the Board were to review this decision as a final order with a full de novo review, the result would be the same. Review of the record in this case indicates that the claimant returned to work after settling her claim for injury to her back. She returned to work in an accommodated position, although the evidence does indicate that the duties in the accommodated position caused symptoms. Claimant also testified that she did not have any specific new accident. According to claimant, it has just always been there and has never gone away. In our view of the evidence, it establishes that the current condition is a natural and probable progression of the original injury, not a new aggravation.¹ For this reason, the Board would affirm the decision to assess these benefits under the original claim.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the appeal from the preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish on December 1, 1998, should be, and hereby is, dismissed.

IT IS SO ORDERED.

Dated this ____ day of February 1999.

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
Scott J. Mann, Hutchinson, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director

¹ *Nance v. Harvey County*, 263 Kan. 542, 952 P.2d 411 (1997).